

EXHIBIT 61

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

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U.S. DISTRICT COURT
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In the matter of:

**FINANCIAL MANAGEMENT AND
OVERSIGHT BOARD FOR PUERTO
RICO**

as representative of:

**COMMONWEALTH OF PUERTO RICO
ET AL.**

Debtors

**PROMESA
TITLE III**

No. 17BK3283-LTS

Claim Number: 16333

**MOTION TO THE FIVE HUNDRED AND THIRTY-EIGHTH OMNIBUS
(NON-SUBSTANTIVE) OBJECTION OF THE COMMONWEALTH
OF PUERTO RICO TO IMPROPER DEBTOR CLAIMS.**

TO THE HONORABLE DISTRICT COURT:

Appearing before this Honorable Court, presided over by Judge Laura Taylor Swain, United States District Court Judge, Maria V. Perez Rodriguez (Respondent), in her own right, does hereby respectfully **ALLEGE, STATE and REQUEST:**

1. On October 31, 2022, we received the Commonwealth of Puerto Rico's (Commonwealth) Five Hundred and Thirty-Eighth Omnibus (Non-Substantive) Objection to Wrongful Debtor Claim.
2. Claim Number 16333 is described in the document as an unnecessary claim.

3. The Commonwealth requests that the claim be reclassified for incorporation into the Electric Power Authority's (PREPA) Title III Case.

Grounds for Opposing the Omnibus Objection

1. Mr. Jay Herriman alleges "case: 17-03283-LTS Doc# 22741-3 Filed: 10/28/22 Entered: 10/28/22 17:34:14 Desc: Exhibit B Page 8 of 8, Items."

5. "To the best of my knowledge and belief, the Claims to be reclassified identify the Commonwealth as a debtor, when the proof of claim and/or supporting documentation shows that it would be proper in any event for such claims to be asserted against the Puerto Rico Electric Power Authority. Accordingly, each of the Claims to be reclassified should be reclassified to be asserted against the Puerto Rico Electric Power Authority.

2. The Commonwealth establishes that the PREPA is a separate and legally independent entity with the capacity to sue and be sued autonomously, 22 L.P.R.A. & 196(e).
3. Section 4 – Governing Board (22 L.P.R.A.) & 194 of the same Act states, "The powers of the Authority shall be exercised and its general policy and strategic direction shall be determined by a Governing Board, which shall be its governing body... ."

4. Pursuant to Section 3 – Creation and Formation of the Authority (22 L.P.R.A. & 193) the Authority is a governmental instrumentality, subject to the control of its Governing Board. In Section 4 – The Governing Board (22 L.P.R.A. & 194) paragraph (a) states "... The Governing Board shall be composed of seven (7) members. The Governor of Puerto Rico shall appoint, with the advice and consent of the Senate, three (3) of the seven (7) members who shall make up the Board..." "The Governor shall evaluate the list of recommended candidates and shall select three (3) persons from the list." These members are selected at the sole discretion of the Governor. The Board's compliance is forwarded to the Governor through a report with findings and recommendations. The main function of the Governing Board is to give strategic direction to the Authority Paragraph (D), line 1 Section 4 – Governing Board (22 L.P.R.A. & 194). Forty-five percent (45%) of the members of this Board are selected and appointed by the Governor, with the advice and consent of the Senate.
- From Paragraph (f) Performance and Conduct, line (v) Section 4 – Governing Board (22 L.P.R.A. & 194) it follows that "Without being construed as a limitation on the powers conferred to the Governor of Puerto Rico under Act No. 3-2017, the Governor may remove any member of the Board for the following causes:
- (ii) Incompetence, manifest professional inability or negligence in the performance of their functions and duties... ."

The fiduciary duties of the members of the Governing Board are framed within the interest of the Authority and the public interest of providing a quality essential service to the public or customers.

The fact that Act 22 L.P.R.A. grants the PREPA the power to sue and be sued does not give the State immunity from being liable for its actions or omissions. Even more so when the State itself, by law, authorized suing it in the following situation:

"Actions to claim movable and immovable property or rights thereon, with or without damages for the damages caused to said property or for its income and utilities, and for the demarcation of rural property."

Act No. 104 of June 29, 1955, as amended, Section 2 – Authorization (32 L.P.R.A. & 3077).

Considering all of the foregoing, the Commonwealth of Puerto Rico is also obligated to effective, timely and full compliance with its obligation under its Constitution to enforce contractual agreements. Failure to hold the State responsible would relieve it of its obligation by allowing it to expropriate my right to a pension in order to satisfy the public debt.

I hereby respectfully request that the Honorable United States District Court, represented by the Honorable Laura Taylor Swain, to enter an order denying the Commonwealth of Puerto Rico's Five Hundred Thirty-Eighth Omnibus (Non-Substantive) Objection to the Commonwealth's Claims of

Incorrect debtor. **DEYING** the request as related to claim 16333, since the constitutional rights established in the Constitution of the Commonwealth of Puerto Rico have been violated.

RESPECTFULLY SUBMITTED,

In San Juan, Puerto Rico, this eighth day of November 2022

[Signature]

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I hereby certify that I have served a copy of this brief to:

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representative for the Commonwealth of Puerto Rico.*

In San Juan, Puerto Rico, this eighth day of November 2022

[Signature]

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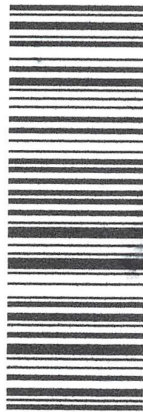
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TRANSLATOR'S CERTIFICATE OF TRANSLATION

Translation from: Spanish (Puerto Rico) into English (US)

TARGEM Translations Inc.

I, Andreea I. Boscor, ATA-certified Spanish-English #525556, acting as translator at TARGEM Translations Inc., a NEW YORK City corporation, with its principal office at 185 Clymer Street, Brooklyn, NY, 11211, USA, certify that:

the English translated document is a true and accurate translation of the original Spanish and has been translated to the best of my knowledge.

Original Document Name: **ECF 22853 – Claim No. 16333**

Signed this 6th of December 2022



Verify at www.atanet.org/verify

A handwritten signature in blue ink, appearing to read 'Andreea Boscor', written over a horizontal line.

Andreea I. Boscor

